

Message Text

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ORIGIN EUR-12

INFO OCT-01 ISO-00 L-03 CAB-02 CIAE-00 COME-00 DODE-00
DOTE-00 EB-07 INR-07 NSAE-00 EPG-02 FAA-00 PM-04
H-01 NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06
JUSE-00 /069 R

DRAFTED BY EUR/WE:JFDOBBINS:JF

APPROVED BY E - MR. COOPER

EUR - REBARBOUR

L:PTRIMBLE

-----160418Z 086074 /21

P R 152342Z JUN 77

FM SECSTATE WASHDC

TO AMEMBASSY PARIS PRIORITY

INFO AMEMBASSY LONDON

C O N F I D E N T I A L STATE 139193

E.O. 11652: GDS

TAGS: EAIR

SUBJECT: CONCORDE

1. FRENCH AMBASSADOR KOSCIUSKO-MORIZET CALLED ON UNDER-
SECRETARY COOPER ON JUNE 15 TO DELIVER A NOTE VERBALE, AN
UNOFFICIAL TRANSLATION OF WHICH FOLLOWS AT THE CONCLUSION
OF THIS MESSAGE.

2. KOSCIUSKO-MORIZET SAID THAT THE NOTE VERBALE HAD BEEN
DRAFTED BEFORE YESTERDAY'S APPEALS COURT DECISION, BUT
RELATED TO THE PREEMPTION ISSUE UPON WHICH THAT DECISION
HAD BEEN BASED, AND SHOULD NOT BE TAKEN AS A ROUTINE DE-
MARCHE.

3. KOSCIUSKO-MORIZET SAID THAT THE EXECUTIVE BRANCH WOULD
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HAVE TO TAKE RESPONSIBILITY FOR THE APPEALS COURT DECISION,
THE POLITICAL CONSEQUENCES OF WHICH SHOULD NOT BE UNDER-
ESTIMATED. HE NOTED THAT OTHER COUNTRIES COULD NOT CON-
SIDER MAKING AGREEMENTS WITH THE US IF THEY COULD NOT BE
SURE THAT THESE AGREEMENTS WOULD BE IMPLEMENTED.

4. UNDERSECRETARY COOPER REPLIED THAT THE US WAS AWARE OF

THE NEED TO ENSURE THAT INTERNATIONAL AGREEMENTS WERE MEANINGFUL, BUT RECALLED THAT THE US HAD A FEDERAL SYSTEM AND

THAT THOSE NEGOTIATING WITH US NATURALLY HAD TO TAKE THIS INTO ACCOUNT. THE UNDERSECRETARY ALSO POINTED OUT THAT THERE WERE DEFINITE LIMITS ON THE POTENTIAL EXERCISE OF LOCAL JURISDICTION SO THAT THIS WOULD NOT NORMALLY APPEAR TO BE A PROBLEM. HE ALSO SAID THAT THE JUSTICE DEPARTMENT'S BRIEF HAD SPECIFICALLY AVOIDED ANY EXPLICIT COMMENT ON THE EFFECT OF INTERNATIONAL TREATIES IN THIS CASE BECAUSE, AMONG OTHER THINGS, OF THE SENSITIVE STATE OF CURRENT NEGOTIATIONS.

5. THE UNDERSECRETARY CONCLUDED THAT USG UNDERSTOOD IMPORTANCE OF THE ISSUE, AND APPRECIATED HAVING FRENCH GOVERNMENT VIEWS.

6. FOLLOWING IS AN UNOFFICIAL TRANSLATION OF THE TEXT OF THE NOTE VERBALE LEFT BY THE FRENCH AMBASSADOR:

BEGIN TEXT -- THE DOCUMENT FILED WITH THE COURT OF APPEALS BY THE US GOVERNMENT APPEARS TO ME TO CALL FOR A RESPONSE ON OUR PART WHICH WOULD MAKE THE FOLLOWING POINT, RESERVING OUR POSITION IN THE AREA OF INTERNATIONAL AGREEMENTS.

7. "THE FRENCH AND BRITISH GOVERNMENTS NOTE THAT THE US GOVERNMENT IN A DOCUMENT FILED WITH THE COURT OF APPEALS AS AMICUS CURIAE HAS OBSERVED THAT IT DOES NOT INTEND TO ANSWER THE COURT'S QUESTION RELATIVE TO THE EFFECT OF INTERCONFIDENTIAL

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NATIONAL TREATIES ON THIS CASE.

8. THE FRENCH AND BRITISH GOVERNMENTS NOTE, HOWEVER, THAT THE CITED DOCUMENT TAKES A POSITION ON THIS QUESTION IN AN IMPLICIT MANNER.

9. IN EFFECT THIS DOCUMENT ENUNCIATES THE LIMITATIONS WHICH, IN THE VIEW OF THE US GOVERNMENT, WOULD BE IMPOSED ON THE COMPETENCY OF THE EXECUTIVE BRANCH OF THE GOVERNMENT. IT IS DIFFICULT NOT TO DEDUCE THAT THIS IMPLIES THAT THE FEDERAL GOVERNMENT, IN PARTICIPATING IN THESE INTERNATIONAL AGREEMENTS, WAS UNDERTAKING OBLIGATIONS IN AREAS IN WHICH IT WAS NOT COMPETENT. THIS WOULD THEN MEAN THAT THE US GOVERNMENT IN CONTRACTING THESE BILATERAL AGREEMENTS WITH FRANCE AND THE UNITED KINGDOM WOULD ONLY HAVE COMMITTED THE FEDERAL GOVERNMENT AND LEFT OPEN THE POSSIBILITY OF ACTION BY LOCAL AUTHORITIES WHICH WOULD HAVE THE PRACTICAL EFFECT OF ANNULING THE VALUE OF THE FEDERAL OBLIGATION.

10. MOREOVER, THE FRENCH GOVERNMENT NOTES THAT TO DEMONSTRATE THE LIMITATION OF COMPETENCE OF THE FEDERAL GOVERNMENT THE DOCUMENT FILED BY THE US GOVERNMENT REFERS TO JUDICIAL OR LEGISLATIVE DECISIONS SUBSEQUENT TO THE PERIOD DURING WHICH THE ABOVE-MENTIONED AIR AGREEMENTS WERE SIGNED WITH FRANCE AS WELL AS WITH GREAT BRITAIN.

11. THE FACT THAT THIS LIMITATION OF COMPETENCE OF THE FEDERAL GOVERNMENT IS NOT ESTABLISHED BY JUDICIAL REFERENCES PRIOR TO THE CONCLUSION OF THE ABOVE-MENTIONED AGREEMENTS LEADS THE FRENCH GOVERNMENT TO TAKE NOTICE THAT THE US GOVERNMENT DOES NOT CHARACTERIZE THIS LIMITATION OF ITS COMPETENCE AS BEING SELF-EVIDENT OR EVEN CLEAR FOR THE REPRESENTATIVES OF THE COUNTRIES WITH WHICH THE US WERE CONCLUDING AIR AGREEMENTS IN 1946 AND 1947 SO THAT THESE REPRESENTATIVES SHOULD HAVE BEEN SOMEHOW NATURALLY AND AUTOMATICALLY CONSCIOUS OF THESE LIMITATIONS OF THE US
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GOVERNMENT WHEN THEY SIGNED THEIR AGREEMENT WITH IT.

12. IT WOULD ONLY BE AFTER SIGNING OF THESE AGREEMENTS THAT THIS LIMITATION OF THE POWERS OF THE US NEGOTIATORS WOULD HAVE BEEN CLEARLY UNDERSTOOD BY THESE NEGOTIATORS AND THAT THIS INTERPRETATION OF THE DIVISION OF COMPETENCE BETWEEN THE FEDERAL GOVERNMENT AND THE LOCAL AUTHORITIES WOULD HAVE BEEN OPENLY ADMITTED BY THE US GOVERNMENT.

13. THE FRENCH GOVERNMENT NOTES THAT IF THIS INTERPRETATION WERE ACCEPTED IT WOULD MEAN THAT THE COMMITMENTS UNDERTAKEN RESPECTIVELY BY FRANCE AND GREAT BRITAIN AND THE UNITED STATES WERE NEITHER EQUAL NOR RECIPROCAL.

14. THE TWO GOVERNMENTS NOW RESERVE THEIR RIGHT TO DERIVE FROM THIS INTERPRETATION ALL CONSEQUENCES WHICH WOULD SEEM APPROPRIATE IN THE FIELD OF THEIR INTERNATIONAL CONTRACT RELATIONS." CHRISTOPHER

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